

STATE OF MICHIGAN
IN THE SUPREME COURT

THE PILGRIM'S REST BAPTIST CHURCH,
a/k/a PILGRIM REST MISSIONARY
BAPTIST CHURCH, NATHAN MAYFIELD,
and STEPHON BLACKWELL,

Supreme Court Case No. 151680

Plaintiffs/Appellees,
v

Court of Appeals Case No. 318797

ARTHUR PEARSON, SR.,

Kent County Circuit Court No.11-12242-CZ

Defendant/Appellant.

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PLAINTIFFS/APPELLEE'S SUPPLEMENTAL BRIEF
WITH PROOF OF SERVICE

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COUNTER-STATEMENT OF QUESTIONS INVOLVED

1. Does this case present an appropriate vehicle for consideration of whatever legal principles might concern the Michigan Supreme Court?

Plaintiffs/Appellees say “No.”

Defendant/Appellant says “Yes.”

The Court of Appeals and trial court did not consider this question.

2. Does this case present one of those rare circumstances where the Courts have involved themselves in the enforcement of church employment contracts?

Plaintiffs/Appellees say “No.”

Defendant/Appellant says “Yes.”

The Court of Appeals and trial court were not given an opportunity to answer this question.

3. Does the Defendant/Appellant’s embezzlement require dismissal of his contract counterclaims?

Plaintiffs/Appellees say “Yes.”

Defendant/Appellant says “No.”

The Court of Appeals and trial court failed to answer this question.

COUNTER-STATEMENT OF FACTS

This Supplemental Brief relies on the Counter-Statement of Facts and Material Proceedings set forth in the Plaintiffs/Appellees’ Response to Application for Leave to Appeal, amended as follows: The “accountant’s report” referred to on page 2 of the Brief, was a Forensic Analysis of Disbursements – Preliminary Finding, by Plante & Moran, PLLC, dated December 23, 2011. It was attached to the original Complaint in this case as Exhibit B and a copy is attached hereto for the Court’s review, with the account numbers redacted.

INTRODUCTION

Pursuant to the Order of December 9, 2015, issued in this matter, the parties were granted leave to file Supplemental Briefs within 42 days. The Plaintiffs/Appellees file this Supplemental Brief to address why this case is not a proper vehicle to consider any of the issues raised by the Defendant/Appellant, the points made in Defendant/Appellant Arthur Pearson, Sr.'s, Reply Brief in Support of Application for Leave to Appeal and alternate grounds for affirming the Court of Appeals' decision.

ARGUMENT

Standard of Review

The Plaintiffs/Appellees contend that the Supreme Court has discretion to determine whether any particular case is an appropriate vehicle for consideration of the legal principles involved. No standard of review was alleged for the new claim raised by the Defendant/Appellant, that he has a "back pay" claim, and arguably it should not be considered by this Court since it was not raised in the Courts below.

The Supreme Court reviews rulings on motions for summary disposition using the *de novo* standard. *Coblentz v Novi*, 475 Mich 558, 567 (2006). In that case, summary disposition was granted under MCR 2.116(C)(10) and the Court noted:

In reviewing a ruling made under this court rule, a court tests the factual support by reviewing the documentary evidence submitted by the parties. *Spiek*, 456 Mich. 331 at 337. We review the evidence and all legitimate inferences in the light most favorable to the nonmoving party. *Wilkinson v Lee*, 463 Mich. 388, 391; 617 N.W.2d 305 (2000). "Where the proffered evidence fails to establish a genuine issue regarding any material fact, the moving party is entitled to judgment as a matter of law." *Maiden v Rozwood*, 461 Mich. 109, 120; 597 N.W.2d 817 (1999)(*Coblentz*, p.567 – 568).

The Plaintiff/Appellees' assertion that the Defendant/Appellant's embezzlement required dismissal of his counter-claims should have been recognized and summary disposition would have been appropriate under MCR 2.116(C)(10).

I. THIS CASE IS NOT AN APPROPRIATE VEHICLE FOR CONSIDERATION OF WHATEVER LEGAL PRINCIPLES MIGHT CONCERN THE MICHIGAN SUPREME COURT.

There are a number of reasons why this case is not an appropriate vehicle for consideration of whatever legal principles might concern the Michigan Supreme Court, including the following:

A. There are Disputed Questions of Fact.

By now it should be clear that there are many disputed questions of fact raised by the parties. Despite his conviction for embezzlement and the overwhelming evidence against him, the Defendant/Appellant asserts at p.8 of his Application for Leave to Appeal, "Pastor Pearson maintains he has never embezzled funds from Pilgrim's Rest Baptist Church." That assertion should cause this Court to question all of the other statements of fact made by the Defendant/Appellant and demonstrates why an examination of those facts does not merit the time and effort of the Michigan Supreme Court.

B. There are Alternate Grounds for Reaching the Same Result.

The Court of Appeals' affirmed the dismissal of Pearson's claims citing *Dlaikan v Roodbeen*, 206 Mich App 591 (1994). While the Plaintiffs/Appellees assert that is a properly reasoned case and the holding cited by the Court of Appeals is appropriately applied in this case, it may be fair to say that there is subsequent precedent which could also be cited, such as that set forth in the Plaintiff/Appellees' Briefs, including *Hosanna-Tabor Evangelical Lutheran Church and School v E.E.O.C.*, 132 SCt 694; 181 LEd 2d 650 (2012).

Even if the Defendant/Appellant were able to convince this Court that the Court of Appeals should have not based its decision on *Dlaikan*, there is ultimately no merit in the Defendant/Appellant's claims and this is not an appropriate case to consider refinement of the ecclesiastical extension doctrine and the boundaries of First Amendment protection for churches.

C. There is No Conflict Among the Courts.

While the Michigan Supreme Court must, on occasion, resolve a conflict among Court of Appeals' opinions or between the Court of Appeals and the Michigan Supreme Court, that circumstance is not present in this case. The Michigan Court of Appeals' opinions, Michigan Supreme Court, and indeed the Federal Appellate Court opinions have consistently held that claims, such as those brought by the Defendant/Appellant, are not cognizable in the civil courts. To the extent that ministers have been able to bring back pay claims in other jurisdictions, the Defendant/Appellant's claim does not fall within those narrow parameters and his unconscionable acts make him an unsuitable party for the Court to consider extending the narrow exception to Michigan.

II. THIS CASE DOES NOT PRESENT ONE OF THOSE RARE CIRCUMSTANCES WHERE THE COURTS HAVE INVOLVED THEMSELVES IN THE ENFORCEMENT OF CHURCH EMPLOYMENT CONTRACTS.

Defendant/Appellant Arthur Pearson Sr's Reply Brief in Support of Application for Leave to Appeal alleges the Supreme Court should grant leave to appeal, because the parties agree a church congregational vote was required for adverse action to be taken against the pastor. That statement is untrue as the Plaintiffs/Appellees explained in their Response to the Application for Leave to Appeal. The Michigan Nonprofit Corporation Act authorized the Trustees of Pilgrim Rest, who serve as the corporate board of directors, to take adverse action, short of termination of

Defendant/Appellant Arthur Pearson, Sr., and the Plaintiffs/Appellees will not repeat their argument on that point.

However, the Defendant/Appellant goes on to allege at page 3 of his Brief that “Pastor Pearson is contractually entitled to the monetary value of his salary and benefits,” from the date of his suspension without pay in January 2012 through the date of the congregational vote in June 2012 to terminate him, citing cases from other jurisdictions in support of that proposition. This claim was never raised in the trial court or Court of Appeals and for that reason it should be considered waived.

A proper analysis of those cases from other states, none of which represent binding precedent, show that they do not support the claim of Defendant/Appellant Pearson. Only under very narrow circumstances have the Courts enforced agreements by Churches relative to the compensation of ministerial personnel. Such circumstances are not present in this case.

It should be noted that Defendant/Appellant was employed to perform services at 510 Franklin SE, the location of Pilgrim Rest Missionary Baptist Church. Defendant/Appellant’s suspension without pay occurred after he was charged with embezzlement and first ordered not to enter onto the Church’s property. With the exception of 34 days, when he insisted on returning to preach, even though the majority of the congregation did not want him, he failed to perform the duties for which he would claim payment.

In *Jenkins v Trinity*, 356 Ill App 3d 504; 825 NE 2d 1206 (2005), the court did not assume jurisdiction over a claim for breach of an employment contract. The Plaintiff claimed that the head pastor breached an agreement for payment of a severance package in return for Plaintiff’s resignation. The court determined that the alleged promise of salary and benefits to be paid in exchange for the resignation “was not intimately related to the church’s right to discharge plaintiff,

but became a contract right, that if proven plaintiff could enforce.” The dismissal of claims for tortious interference with a contract and defamation were upheld. (*Jenkins* p. 511) Thus, *Jenkins* does not present a circumstance where the court agreed to hear a claim related to the church’s right to discharge plaintiff, which the Defendant/Appellant seeks to pursue in this case.

In *Bodewes v Zuroweste*, 15 Ill App 3d 101; 303 NE 2d 509 (1973), the claim of a Catholic priest to payment of back pay, **which had been earned by the rendition of services**, was held to be an exception to the general rules set forth in *Presbyterian Church in the United States v Mary Elizabeth Blue Hull Memorial Presbyterian Church*, 393 US 440, 89 SCt 601, 21 LEd 2d 658 (1969), as being a suit to obtain “payment of a just debt when the purpose of the First Amendment is not being violated.” (*Bodewes* p.103) The Defendant/Appellant did not render services during virtually all of the period at issue, as he was ordered not to set foot on the Church property.

In *Gabriel v Immanuel Evangelical Lutheran Church*, 266 Ill App 3d 456; 640 NE 2d 681 (1994), the suit brought by a parochial school teacher whose offer or “call” was withdrawn by the congregation due to untimely “acceptance,” was **dismissed**. Thus it provides no support for the Defendant/Appellant’s claims in this case.

Similarly, in *Goodman v Temple Shir Ami, Inc*, 712 So 2d 775 (Fla App, 1998), the appellate court dismissed a complaint by the plaintiff that he was terminated as the Rabbi of the Temple, premised upon a claim that he had a binding contract for employment, which extended his tenure beyond the date of his completed contract. Similar to the holding in *Bodewes, supra*, the court only allowed the Rabbi’s claim that he had not been paid everything due to him under the completed employment agreement, to go forward.

In *Dobrota v Free Serbian Orthodox Church*, 191 Ariz 120; 952 P 2d 1190 (1998), the court followed the general holding in *Serbian Eastern Orthodox Diocese v Milivojevich*, 426 US

696, 709, 49 LEd 2d 151; 96 SCt 2372 (1976) to the effect that “civil courts must abstain from deciding ministerial employment disputes or reviewing decisions of religious judicatory bodies concerning the employment of clergy, because such state intervention would excessively inhibit religious liberty.” (*Dobrota* p.124) Plaintiff Dobrota brought suit against the church that had employed him and the Diocese where the church was located, seeking damages for breach of contract, breach of the covenant of good faith and fair dealing, and other torts.

The appellate court in *Dobrota* determined that a civil court cannot, consistent with the First Amendment, decide a dispute between a church and its priest concerning the church’s termination of a priest’s employment. They did hold that a civil court can enforce the Diocese’s judgment awarding past due compensation and benefits to a priest where the Diocese determined that the Church had acted wrongfully, as long as enforcement does not entangle the court in matters of church doctrine. The case provides no support for Defendant/Appellant, since the general holding reinforces the Opinion and Order of the Court of Appeals below and, in *Dobrota* the Court held that the priest’s tort claims were appropriately dismissed.

Fellowship Tabernacle, Inc v Baker, 125 Idaho 261; 869 P 2d 579 (1994), concerned a claim for damages by a former minister for breach of an employment contract and the church’s request for an injunction barring the former minister from carrying on any church business or returning to the church property. While the “question of damages was not well presented” and there was no special verdict form, it appears the jury returned a verdict for plaintiff for back wages he had earned and the court granted the injunction that the church requested. Plaintiff had attempted to assert that his employment contract was perpetual, but failed. (*Fellowship* pp. 263, 265) Arguably, this case strays into the area of religious polity, much more than the other cases discussed herein. However, its holdings ultimately follow the general rule that termination of a

pastor is not reviewable by the civil courts, but payment for services actually rendered prior to the date of termination may be awarded.

In *Mayhew v Vanway*, 371 SW 2d 90 (Tex Civ App, 1963), it appears that the parties agreed in chambers to try the minister's cause of action for the recovery of damages for breach of contract by the church, and the common constitutional defenses present in the other cases were not raised by the church. While the church may have waived those defenses in that case, essentially agreeing to try a breach of contract case, that is not the case here and it establishes nothing in the way of persuasive precedent for this Court. The trial court had entered a "take nothing judgment" and the appellate court reversed, noting incomplete proofs and the pastor's duty to mitigate damages by seeking employment elsewhere.

Defendant/Appellant cited *Pearson v Church of God*, 325 SC 45; 478 SE 2d 849 (1996) which is another case that actually supports the Plaintiffs/Appellees' position. The plaintiff, a retired minister, had his ministry revoked for adultery and as a result, his pension benefits were discontinued. The pension agreement provided that "Any aged minister receiving benefit from the Aged Ministers' Fund whose ministry has been revoked shall cease to draw compensation from the Fund." (*Pearson*, pp. 53-54) Despite such language, the plaintiff prevailed in the trial court, but the Court of Appeals and Supreme Court for the State of South Carolina overturned that result. They cited *Milivojevic*, *supra*, and *Jones v Wolf*, 443 US 595; 99 SCt 3020; 61 LEd 2d 775 (1979) in resolving the case. The Supreme Court noted that courts must accept as final and binding the decision of highest judicatories of a religious organization on questions of discipline, faith or ecclesiastical rule, custom or law. (*Pearson* p.49) The revocation of Pearson's ministry caused the termination language to take effect and therefore his pension payments were properly terminated.

Similarly in this case, upon proof of embezzlement, the church leadership took action to suspend the Defendant/Appellant and after he was bound over to circuit court, the congregation terminated him. This Court should respect those determinations that his embezzlement disqualified him for holding office and deny Defendant/Appellant's Application for Leave to Appeal. The Court in *Pearson* did not fall for his attempts to fabricate an inconsistency where none exists in the language of the pension plan (*Pearson* p.54) and the Court in this case should not fall for the Defendant/Appellant's attempts to fabricate a claim.

In *Way v Ramsey*, 192 NC 549; 135 SE 454 (1926), the Supreme Court of North Carolina affirmed the trial court's overruling of the demurrer as to the church, in a suit to recover \$328.06, the unpaid amount of the plaintiff pastor's annual salary, where the pastor had served for the one year provided. Again, no constitutional issues were raised.

Finally, in *Gipe v Superior Court of Orange County*, 124 Cal App 3d 617; 177 Cal Rptr 590 (1981), the relevance to this case asserted by the Defendant/Appellant does not exist. Literally, the case had nothing to do with the merits of a minister's claim for severance pay, which had actually been denied by the municipal court upon the church's motion for summary judgment. The issue considered on appeal in *Gipe* was whether the superior court could disqualify the State Labor Commissioner from representing the minister in an appeal from the municipal court judgment. All the appellate court did was vacate the order disqualifying the State Labor Commissioner and the merits of the claim and summary disposition of it by the municipal court were never considered.

The Defendant/Appellant has not brought a narrow claim for back pay for services rendered, but has directly challenged the church's termination of his employment and included a number of tort claims against the church leadership and the church. The dismissal of his Complaint

by the trial court, and the Court of Appeals should be upheld and further review of the Court of Appeals' reasoning for upholding the dismissal is not warranted.

III. THE APPELLANT'S EMBEZZLEMENT REQUIRED DISMISSAL OF HIS CONTRACT COUNTERCLAIMS.

An alternate ground upon which the Defendant/Appellant's contract counterclaim should have been dismissed, is that he pled No Contest to embezzlement. In the Plaintiffs/Appellees' Affirmative Defenses to the Defendant/Appellant's original Complaint, they asserted that:

1. Counter-Plaintiff's embezzlement caused the Counter-Defendants to take the action complained of, which was wholly justified under the circumstances.

While a plea of No Contest is not generally admissible, it is admissible pursuant to MRE 410(2) in this situation where the Appellant has filed a Counterclaim due to the termination of his employment. MRE 410(2) states in relevant part:

Except as otherwise provided in this rule, evidence of the following is not, in any civil or criminal proceeding, admissible against the defendant who made the plea or was a participant in the plea discussions:

- (1) A plea of nolo contendere, except that, to the extent that evidence of a guilty plea would be admissible, evidence of a plea of nolo contendere to a criminal charge may be admitted in a civil proceeding to support a defense against a claim asserted by the person who entered the plea;

The Plaintiffs/Appellees contend the contract counterclaim should have been dismissed because the Defendant/Appellant was the first breaching party. The Defendant/Appellant breached the "employment contract" before any alleged breach by the Defendant. Michigan's "first breach rule" precludes a breaching party from maintaining an action against the other contracting party for any subsequent breach.

"The rule in Michigan is that one who first breaches a contract cannot maintain an action against the other contracting party for his subsequent breach or failure to perform." *Michaels v*

Amway Corp, 206 Mich App 644, 650 (1994). The rule is applicable where the initial breach is substantial.

A substantial breach occurs “...where the breach has effected such a change in essential operative elements of the contract that further performance by the other party is thereby rendered ineffective or impossible, such as the causing of a complete failure of consideration (*Kunzie v Nibblelink*, 199 Mich 308, 165 NW 722 (1917)) or the prevention of further performance by the other party (*Stahelin v Sowle*, 87 Mich 124, 49 NW 529 (1891)).” *McCarty v Mercury Metalcraft Co*, 372 Mich 567, 574 (1964).

The Defendant/Appellant’s embezzlement of funds represented a first substantial breach of the terms of his employment, such that further performance by the Church was rendered ineffective or impossible. The congregation lost faith in him and could hardly sit through sermons by a man who had so violated the Commandments of God and the laws of the State.

If that breach on the part of the Defendant/Appellant was not enough, a second substantial breach, the death knell to the employment relationship, occurred when he was ordered not to set foot within one block of the Church, which is located at 510 Franklin SE. (See Exhibit B of the Plaintiffs/Appellees’ Response to Application for Leave to Appeal).

From that point on, the Defendant/Appellant was unable to report for work and it is narcissistic for him to suggest that the Pilgrim Rest Missionary Baptist Church existed wherever he could find a place to stand and lived only in the people who gathered in front of him when he preached. The notion is patently ridiculous and his termination was assured on June 9, 2012, because he could not attend the meeting and none of his followers had attended Church since he was barred from the premises. They left Pilgrim Rest Missionary Baptist Church, formed a new

church and the members who remained easily met the two-thirds requirement for his termination pursuant to the so called “employment contract.”

CONCLUSION

The church leadership in this case acted appropriately and within the bounds of the law in addressing the embezzlement perpetrated by the Defendant/Appellant. The Board of Trustees had the authority and good cause to suspend the Defendant/Appellant. They acted appropriately in suspending him. The Church properly terminated the Defendant/Appellant. Considering his suspension and inability to perform the services for which he was employed, prior to the date of termination, there is no valid claim for unpaid compensation.

WHEREFORE, the Plaintiffs/Appellees respectfully request that this Honorable Court deny the Application for Leave to Appeal or issue an order upholding the Court of Appeals’ result, albeit on alternate grounds.

Dated: January 15, 2015

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via U.S. Mail to his address of record.

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